

### **TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture proposes to amend Sections 1392.2 and 1392.4 of the regulations in Title 3 of the California Code of Regulations.

Notice is also given of a written public comment period. Any interested person, or his or her duly authorized representatives, may present statements or arguments in writing relevant to the proposed regulation until 5:00 p.m. on July 26, 2004. Please refer to the contact section of this notice for the contact persons and address information when submitting comments.

A public hearing is not scheduled but will be if any interested person, or his or her duly authorized representative, submits a written request for public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing (if one is requested) or following the written comment period (if no public hearing is requested), the Department of Food and Agriculture, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Section 1392.2 provides definitions for the language used in the California Code of Regulations pertaining to the Direct Marketing Program. Currently, there is no definition of a sprout.

The specific purpose of amending Section 1392.2 is to adopt a definition of a sprout for the purpose of practicing the agricultural arts to sell at a certified farmers' market.

Section 1392.4 specifies certain conditions and limitations under which, 1) a certified farmers' market operates and 2) a certified producer may sell their agricultural products.

The specific purpose of amending section 1392.4 is to adopt subsections (h), requiring that the operator of a certified farmers' market provide upon the request of an enforcement officer, a valid certified farmers' market certificate when operating a certified farmers' market and (i), requiring a certified producer selling organic products to post a copy of their current state organic registration and their organic certification, if applicable.

#### **FISCAL IMPACT STATEMENTS**

The Department has initially determined that these proposed regulations would have no effect on savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will

result from these proposed regulations. The Department has also initially determined that the proposed regulations do not impose a mandate on local agencies or school districts.

### **EFFECT ON SMALL BUSINESS**

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes. The Department does recognize that there could be a potential economic impact to some growers. This is based on the following facts.

Currently, Title 3 of the California Code of Regulations does not provide a definition for sprouts sold at certified farmers' markets. The Department is proposing to adopt a definition to provide consistency within the markets. Some sprout growers may no longer be able to sell their sprouts at these markets based on the proposed definition. However, there are other venues available to growers such as their production site, flea markets and roadside stands.

Section 46013.1(a) of the Food and Agriculture Code requires that any person engaged in the production or handling of raw agricultural products sold as organic within the State of California must register with the agricultural commissioner in the county of principal operation. In addition, the federal National Organic Program (NOP) requires that any person selling more than five thousand dollars of organic products on an annual basis must also be certified as organic through an accredited certifier. Currently, there is no requirement that a certified producer provide proof of their state organic registration and if applicable, organic certification at a certified farmers' market.

A significant amount of the produce sold at farmers' markets is represented as organic and tends to be sold at a higher rate than other produce thus generating more revenue. Consumers are willing to pay a premium price for produce they believe has been grown in accordance with federal and state organic standards. Under the existing conditions, a grower could falsely represent produce as organic and collect the higher price thereby creating an unfair market place. This clearly undermines consumer confidence as well as the integrity of the organic industry. The Department is proposing to adopt a regulation that will require a producer to post a copy of their state organic registration and federal certification, if applicable, at the farmers' market. The Department believes the proposed changes are necessary to protect the integrity of the industry as well as consumers from deceptive agricultural practices.

The proposed changes meet the needs of both, the industry and the consumer, without requiring substantial changes on the part of industry.

### **EFFECT ON HOUSING COSTS**

The Department has initially determined that the amendment of the proposed regulation would have no effect on housing costs.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Department has initially determined that the proposed changes would have no significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

### **ASSESSMENT STATEMENT**

The Department has initially determined that the proposed changes in the regulations would not affect the creation or elimination of jobs in California and would neither create nor eliminate or expand existing businesses in California.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The Department is not aware of any significant cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

### **AUTHORITY AND REFERENCE**

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407, 42681, 42682, 42684, 47000, 47001, 47002, 47003, 47004, 47020 and 47022 of the Food and Agricultural Code, and to implement, interpret, or make specific Section 42941, 47000, 47001, 47002, 47003, 47004, 47020, 47022.2 and 47022.3 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

## **CONTACT**

Inquiries concerning the proposed administrative action may be directed to Sonja Dame or Janice L. Price. Inquiries pertaining to the substance of the proposed regulation should be directed to Janice L. Price. The contact persons may be reached at the Department of Food and Agriculture, Inspection and Compliance Branch, 1220 N Street, Sacramento, CA 95814, (916) 445-2180, fax (916) 445-2427. Written comments may also be submitted via e-mail to [jprice@cdfa.ca.gov](mailto:jprice@cdfa.ca.gov).

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

A complete copy of existing regulations, the proposed changes, and the Initial Statement of Reasons may be obtained upon request from the Department of Food and Agriculture. These documents are available on our website at [www.cdfa.ca.gov/cdfa/pendingregs](http://www.cdfa.ca.gov/cdfa/pendingregs).

In addition, all information, including reports, documentation, and other materials (rulemaking file) related to the proposed action is available upon request from the agency contact persons named in this notice. The Final Statement of Reasons, when available, may also be obtained from the contact persons named in this notice. The text of the proposed regulations with any sufficiently related changes clearly indicated will be made available for 15 days prior to adoption.

DEPARTMENT OF FOOD AND AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Valerie Brown, Deputy Secretary

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS  
Title 3. California Code of Regulations  
Article 6.5 Direct Marketing

Adopt Section 1392.2 (t). to read:

Section 1392.2. Definitions.

...

(t) Sprouts. For the purpose of practicing the agricultural arts to sell at a certified farmers' market, fifty percent of the seeds must have sprouts that have emerged from the seed coat, husk, pericarp or other type of seed covering. Due to the various types or varieties of sprouts, there is no requirement for the length of the sprout and no set amount of time for the seeds to soak. Certified producers may not sell sprouts as their own production resulting from the agricultural arts, if less than 50 percent of the seeds have sprouts that have emerged from the seed coat, husk, pericarp or other type of seed covering.

NOTE: Authority cited: Sections 407, 42682, 47000, 47001, 47002, 47003, and 47004, Food and Agricultural Code. Reference: Sections 42941, 47000, 47001, and 47003, Food and Agricultural Code.

Adopt Sections 1392.4 (h) and (i) to read:

Section 1392.4. Conditions of Direct Marketing.

...

(h) The operator of a certified farmers' market shall, upon the request of an enforcement officer, provide a current valid certified farmers' market certificate when operating a certified farmers' market.

(i) Anyone selling organic products at a certified farmers' market shall conspicuously post at the point of sale a photocopy of their current State of California organic registration and, if applicable, the organic certification.

NOTE: Authority cited: Sections 407, 42682, 47000, 47001, 47002, 47003, and 47004, Food and Agricultural Code. Reference: Sections 42941, 47000, 47001, 47003, and 47004, Food and Agricultural Code.